

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SUBREGION THIRTY-THREE**

VACTOR MANUFACTURING, INC.1/

Employer

and

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL WORKERS
OF AMERICA (UAW)1/

Petitioner

DECISION AND DIRECTION OF ELECTION

33-RC-4675

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,2/ the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.3/

3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.4/

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:5/

All full-time and regular part-time production and maintenance employees employed by the Employer at its Streator, Illinois facility, but excluding office clerical employees, professional employees, confidential employees, guards and supervisors, including crew leaders, as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations.^{6/} Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by International Union, United Automobile, Aerospace and Agricultural Workers of America (UAW).

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **N.L.R.B. v. Wyman-Gordon Company**, 394 U.S. 759 (1969).^{7/} Accordingly, it is hereby directed that within 7 days of the date of this Decision two copies of an election eligibility list, containing the names and addresses of all the eligible voters, shall be filed by the Employer with the Officer-in-Charge for Subregion 33 who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the *33rd Subregion, Hamilton Square, 300 Hamilton Boulevard, Suite 200, Peoria, Illinois, 61602*, on or before **April 12, 2002**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by April 19, 2002.

Dated April 5, 2002
at: Peoria, Illinois

/s/ Will J. Vance
Will J. Vance, Acting RD, Subregion 33

1/ The parties stipulated to their correct name and that all documents should be amended to reflect their proper names.

2/ I have carefully considered the record evidence, the parties' statements of position on the record, and the briefs filed by the Employer and the Petitioner.

3/ The parties stipulated that the Employer is engaged in commerce within the meaning of the National Labor Relations Act and is subject to the jurisdiction of the National Labor Relations Board. The Employer is an Illinois corporation engaged in the business of the manufacture of sewer cleaner units at its Streator, Illinois facility. During the past 12 months, a representative period, the Employer has purchased and received goods valued in excess of \$50,000 directly from sources located outside the State of Illinois. During the same period of time, the Employer received gross annual revenues in excess of \$500,000. The approximate number of employees in the unit found appropriate herein is 339.

4/ The parties stipulated that the Petitioner is a labor organization within the meaning of the Act, and I so find. There is no collective bargaining agreement covering any of the employees in the unit sought in the petition herein, and the parties are in agreement that there is no contract bar. Furthermore, there is no history of collective bargaining affecting these employees.

5/ The parties stipulated that an appropriate unit would include all full-time and regular part-time production and maintenance employees employed by the Employer at its Streator, Illinois facility, but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act. Accordingly, I find that the above-described unit constitutes an appropriate unit for collective bargaining. The only issue raised herein is whether or not the 27 crew leaders employed by the Employer are supervisors within the meaning of Section 2(11) of the Act and, consequently, should be excluded from any appropriate bargaining unit. With respect to the supervisory issues, the Petitioner contends that the crew leaders possess a sufficient indicia of authority as find in Section 2(11) of the Act to be deemed to be supervisors. Contrary to the Petitioner, the Employer maintains that

the crew leaders do not have any supervisory indicia under the Act and should be included in the unit found appropriate herein. The Petitioner and Employer stipulated that the crew leaders are to be treated by the Board as similarly situated and that the Board's finding as to the supervisory status of one or more crew leaders would apply to all crew leaders.

With respect to the crew leaders, the record establishes that the crew leaders possess supervisory indicia required by Section 2(11) of the Act. Accordingly, and as discussed below, I find that the crew leaders are supervisors within the meaning of the Act, and I shall exclude them from the unit.

BACKGROUND

As indicated above, the Employer is engaged in the business of the manufacture of truck mounted sewer and industrial cleaner units at its Streator, Illinois facility. Jay Buehler, General Manager of the Employer, is responsible for the profit and loss of the Employer. Buehler reports to the Group President of Environmental Products of Federal Signal. The functions that report to Buehler are production, engineering, financing, human resources, product development, purchasing, warehouse and production control. The Manager of Production Engineering, Manager of Product Development Engineering, Plant Manager, Production Control Supervisor, Storeroom Supervisor, Vice President and Controller, Director of Human Resources, and Manager of Purchasing report to Buehler. Three out of nine supervisors also report to directly to Buehler. The other six supervisors, production supervisors, report to the Plant Manager. Although the parties did not stipulate that Jay Buehler possesses supervisory authority as defined in Section 2(11) of Act, it is clear from the record that the parties are in agreement that Buehler is not to be included in the unit.

Matt Bouley is Supervisor of Weld; John Brownlee is Supervisor of Storeroom; Greg Grant is Supervisor of Assembly; Mike Hawkins is Supervisor of Service; Dan Henson is Supervisor of Maintenance; Phil Nink is Supervisor of Paint; Mike Rose is Supervisor of Assembly; Delbert Wilborn is Supervisor of Weld Form Machine, and Art Zimmerman is Supervisor of Second Shift Production. The parties stipulated that Bouley, Brownlee, Grant,

Hawkins, Henson, Nink, Rose, Wilborn and Zimmerman possess the authority to hire and fire and are supervisors within the meaning of the Act. Accordingly, I find that Bouley, Brownlee, Grand, Hawkins, Henson, Nink, Rose, Wilborn and Zimmerman are supervisors within the meaning of Section 2(11) of the Act and are to be excluded from unit found appropriate herein.

Vactor employs approximately 540 employees. Three-hundred and sixty-six of those employees, including 27 crew leaders, work in production, maintenance and store room positions. Vactor operates three shifts, which are from 6:00 a.m. to 2:00 p.m., 2:00 p.m. to 10:00 p.m. and 10:00 p.m. to 6:00 a.m. 198 employees including 16 crew leaders work on first shift. 112 employees including 7 crew leaders work on second shift. 52 employees including 4 crew leaders work on third shift. First shift has eight supervisors, and second shift has one supervisor. No supervisors work on third shift. The Employer has a large facility and has employees dispersed throughout the facility.

Production work at the Employer's facility is done according to a master production schedule. The master production schedule is generated by custom orders and requirements. When an order is received, a bill of required materials is prepared, and that bill of materials is broken down by the various specific components that are required for completion of the customer order. The components are then time sequenced in the manner that results in parts being produced and available in the order in which they need to be placed on assemblies and eventually mounted on a truck. This time sequence schedule is automatically generated in the Production Control Department by the Company's computer system based upon established models for the length of time it takes to produce a particular part.

Once the production report is generated, it is sent to the engineering, purchasing and production departments. From this document, each department can identify the production schedule and, specifically, what work is to be completed on any given day. Additionally, the Company has production meetings twice daily where the specific units and components to be

completed are discussed to determine where in the production process these items actually stand. The production reports are provided to the crew leaders.

The company utilizes crew leaders to assist with manufacturing operations who have responsibilities for their specific areas. Crew leaders attend daily production meetings with Company supervisors and managers. The crew leaders provide the supervisors and managers with the specific details as to where the units and components are and identify whether there are any part shortages that could impact the schedule. Additionally, the crew leaders are advised by management and supervision of the specific jobs that are to be completed during the shift. Crew leaders also assist in identifying potential safety hazards at the production meetings.

General Manager's staff meetings take place weekly. These meeting are not attended by crew leaders. Only the nine supervisors and management employees who report to the General Manager attend these weekly meetings. Although crew leaders receive production reports, they do not receive the efficiency reports and reports concerning the number of hours and the hours of overtime worked and reports on the amount of expense money spent for supplies which are given to supervisors.

After the daily production meeting concludes, the crew leaders return to their designated work areas and assign work to their employees based upon the schedule that was developed in the production meeting. The crew leaders use their judgment in assigning people in the areas to meet production requirements. The crew leaders have a number of responsibilities, including chasing parts, assisting in setup of work, assigning work, obtaining necessary technical information to complete the work, and material handling. Crew leaders assign work based on employee availability, qualifications, experience and ability. When employees finish a truck, the crew leader tells them on which truck they will work next. The crew leader gets this information from the production schedule. The crew leader answers employees' questions and reviews blueprints with employees. If there are special instructions concerning a job, the crew leader tells employees of these special instructions.

When employees need parts, the crew leader arranges to get these parts. Crew leaders inspect the work of their employees, correct their work and provide training. They are responsible for ensuring that the work is completed properly. Crew leaders will tell employees when they have done a good job and tell them when they would have done the job another way. The crew leader informs employees when there is overtime. Employees report their absences to crew leaders. With this information, the crew leader can account for production in their absence and assign employees to different task to cover for the absent employee. The record evidence did not show that the crew leaders work with the tools or the machines on a regular basis.

The crew leader position description states that they report to department supervisors and supervise area employees. Their primary function is to “(o)versee and direct the activities of employees of the area. Responsible for meeting internal and external customer requirements with specific emphasis on safety, quality, cost control, production requirements, and employee development.” Among other things, they are to supervise other areas when needed, ensure that all company policies are being followed, and conduct performance appraisals during the probation period for new employees.

The terms and conditions of employment for crew leaders are substantially identical to those of nonsupervisory employees in production and maintenance jobs. Crew leaders, like nonsupervisory employees, are paid on an hourly basis, are required to clock in and out, receive a paid and scheduled lunch break, receive overtime pay for hours worked in excess of 40 hours, work the same shifts and hours and are subject to a no-fault attendance policy relative to absences from work.

A crew leader is a grade 8 on the Employer’s pay scale and is always paid higher than any other hourly employee in his area. The pay range for non-crew leader employees is \$9.35 to \$18.15 per hour. The crew leader will be paid either \$18.55 an hour, or, if an employee in that crew leader’s area earns more than \$18.55 an hour, the crew leader will receive \$.65 an hour more than the highest scale rate in that area. Crew leader wages are directly tied to

increases in production employees' wages. Such increases occur according to a specific time progression or as a result of an annual across-the-board wage increase. Crew leaders and hour production employees have identical employee benefits.

Crew leaders arrive at work in the morning at approximately 5:00 a.m. Supervisors do not arrive at work in the morning until approximately 6:00 a.m. and work until between 4:00 p.m. and 6:00 p.m. There is always a period each morning when only crew leaders are in charge of the plant and this is always the case on the third shift where there are no supervisors. However, a supervisor can always be reached on the telephone.

Crew leaders are involved with receiving information regarding employee attendance and determining whether employees have appropriately clocked in and out of their shifts. Employees who are going to be absent or need to leave work early are to notify their crew leaders of their absences. However, the crew leader does not approve the absence and does not have any authority to discipline an employee for such absences. Instead, the time keeping systems automatically charges points. Similarly, crew leaders accept vacation requests from employees and indicate whether the employees' requests will be granted based upon a specific formula that only allows ten percent (previously 25 percent) of employees in a department to be off at the same time. Crew leaders do not have the authority to deviate from the set formula. Employees seeking special treatment must submit their requests to their supervisor or to a human resources representative.

Crew leaders report to their supervisors when there is an incident with a particular employee that he believe requires attention. Once a supervisor has been notified of the problem, he may ask the crew leader to gather information about the employee problem and may have the crew leader prepare documentation relative to the incident at issue. The supervisor generally performs an independent investigation of the events and ultimately makes the decision whether discipline is appropriate and at what level. On occasion in the past, crew leaders have performed evaluations and made recommendations as to whether a probationary employee should be retained or fired. Crew leaders do not have the authority to

hire or fire. Supervisors conduct interviews of applicants for employment and make hiring recommendations. Regarding firing, a crew leader has told an employee that he could recommend to the right people that someone be fired. Crew leaders have written reprimands to employees which supervisors have then discussed with and given employees. Crew leaders have also signed the supervisor signature blocks on Notices of Disciplinary Action. In all cases, though, stipulated supervisors have also signed those Notices. In cases of discipline, crew leaders may alert supervisors of incidents for which discipline is ultimately issued, but the discipline does not issue until an independent investigation has been conducted by the supervisor. Crew leaders do not have the authority to transfer employees to different shift or departments.

While supervisors have their own offices, crew leaders do not have an office but do have their own desk and a computer. Although the computer belongs to the crew leaders, employees below the crew leaders do have access to use of the computer. In 2001, crew leaders attended training with supervisors. This training concerned effective communications interpersonal relationships with other people. It did not involve any matters concerning wages, hours, discipline or other terms and conditions of employment.

DISCUSSION OF SUPERVISORY ISSUE

Supervisory status under the Act depends on whether an individual possesses authority to act in the interest of the Employer in the matters and in the manner specified in Section 2(11) of the Act, which defines the term “supervisor” as:

The term “supervisor” means any individual having authority, in the interest of the Employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly direct them, or adjust their grievances, or effectively to recommend such action, if in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

29 U.S.C. Section 152(11).

The party seeking to exclude employees from a petitioned for bargaining unit under the provisions of Section 2(11) of the Act bears the burden of proving the employees' supervisory status. National Labor Relations Board v. Kentucky River Community Care, Inc., 121 S.Ct. 1861 (2001). In order to be considered a supervisor under Section 2(11) of the Act, an employee must meet the following criteria: (a) the employee must have the authority to engage in one or more of the following supervisor functions: hiring, discharge, lay off, recall, transfer, suspension, promotion, assignment of work, direction of employees, reward, discipline, or adjustment of grievances; additionally an employee may be considered a supervisor if he or she can effectively recommend action in any of the above categories; (b) the employee must exercise such authority in a manner that is not merely clerical or routine in nature, but which requires the exercise of independent judgment; and (c) the employee must hold such authority in the interest of the Employer. National Labor Relations Board v. Kentucky River Community Care, Inc., 121 S.Ct. at 1867.

It is clear that in interpreting the definition of supervisor under Section 2(11) of the Act, it is to be viewed in the disjunctive and that "possession of any one of the authorities listed in (that Section) places the employees invested with the authorities in the supervisor class". Ohio Power Company v. NLRB, 176 F.2d 385 (C.A. 6 1949), cert denied 338 U.S. 899 (1949).

In addition to the supervisory definition which specifically lists certain indicia of supervisory status, commonly referred to as "primary indicia", the Board and courts look to several "secondary indicia" for added guidance in finding whether an employee is a supervisor or not. NLRB v Baby Watson Cheesecake, Inc., 148 LRRM 2897, 2903 (2d Cir. 1984). The secondary indicia include (1) "whether an employee is perceived by others to be a supervisor", (2) "whether an employee receives a higher wage than others in the bargaining unit", and (3) "whether a court's finding that an individual is not a supervisor would create an unreasonable ratio of employees to supervisors". *Id.*

CREW LEADERS POSSESS PRIMARY INDICIA OF SUPERVISORY AUTHORITY

As set forth above, in order to establish that crew leaders are supervisors, Petitioner must prove that such persons have the authority to engage in one or more of the twelve supervisors functions specified in the Act. National Labor Relations Board v. Kentucky River Community Care, Inc., *supra*. One of the “primary indicia” is authority to assign work or effectively to recommend such actions. In the instant case, crew leaders are the individuals who assign work. If an employee leaves early, he has to report to the crew leader his absence in order that the crew leader can account for production in that person’s absence. The crew leader assigns employees to different tasks to cover for the absent employee. The crew leaders inspects employees’ work and, if any of the work is inadequate, the crew leader is responsible for assuring that the work is done properly. Crew leaders assign work that is scheduled and distribute the work to employees by determining who is qualified and possesses the experience and the abilities to perform work. The employer has placed the crew leaders in positions of responsibility for their areas and holds them out to employees as supervisors. Crew leaders, not the stipulated supervisors, are the authority that employees see on a regular basis. Some employees only see their supervisor once a week. On the third shift on which no supervisors work, employees appear to see a supervisor even less frequently. As discussed below, the ratio of supervisors to employees further suggests that the crew leaders must play a significant role in the assignment and direction of work.

Crew leaders attend production meetings each day with other managerial employees of the Employer. By participating in the daily production meetings and then effectively making decisions as how to carry out the daily objectives of the Employer by virtue of their ability to assign work and make sure that schedules and the specifications required by customers are met, the crew leaders make responsible decisions exercising independent judgment and not merely routine decisions. The production reports set out the general framework and the large task to be accomplished, which the crew leader then implements based on his decisions as to the assignment of work and the direction of employees. cf.

Dynamic Science, Inc., 334 NLRB No. 57 (2001) (Test leaders' role in directing employees is extremely limited and circumscribed by detailed orders and regulations issued by the Employer and other standard operating procedures.)

Another primary indicia of supervisory authority is the authority to responsibly direct the employees and effectively recommend such actions. The crew leader position description states that they are to supervise area employees and that their "primary function" is to "(o)versee and direct the activities of employees of the area. Responsible for meeting internal and external customer requirements with specific emphasis on safety, quality, cost control, production requirements, and employee development." Among other things, they are to insure that all company policies are being followed. The crew leaders clearly direct employees in their daily work. Crew leaders inspect employees work and if they observe something wrong, they immediately inform the employees to do it another way. See Custom Bronze & Aluminum Corp., 197 NLRB 397 (1972). See also Hecks, Inc., 277 NLRB 916, 919 (1985); Illini Steel Fabricators, Inc., 197 NLRB 303 (1972); Wolverine World Wide, Inc., 196 NLRB 410 (1972); Birmingham Fabricating Co., 140 NLRB 640, 642 (1963). On a daily basis they exercise independent judgment in circumstances where stipulated supervisors are seldom seen nor heard from by employees. Furthermore, crew leaders are in full charge of employees during the entire third shift and significant portions of other shifts. See Dale Service Corp., 269 NLRB 924 (1984). Practically speaking, no one except the crew leaders direct employees in the building of complex and sophisticated equipment which the Employer manufactures.

When an employee exercises one of the twelve primary indicia of supervisory authority "with judgment that possesses a sufficient degree of independence, the Board invariably finds supervisory status." NLRB v. Kentucky River Community Care, Inc. 121 S.Ct. at 1869. Crew leaders utilize independent judgment in assigning work and responsibly directing employees and the exercise of their authority is not routine or clerical in nature. Crew leaders utilize their independent judgment in assigning work to employees whom they

deem qualified and possessing the experience and abilities to perform the tasks at hand. Crew leaders utilize independent judgment in inspecting the work of employees, in determining whether the work has been done correctly or whether the work needs to be redone. Inspecting employee work product to insure compliance with customer specifications is not routine or clerical. Crew leaders have to use independent judgment to determine what is the most efficient method of performing quality work or correcting an error in craftsmanship. Crew leaders consistently inspect their employees' work and direct the employees as to what methods should be used to correct any errors. Crew leaders make these important decisions by using their individual judgment, without any resort to higher supervision. Crew leaders exercise independent judgment with respect to assigning and responsibly correcting the work of unit employees and do so in more than a routine fashion. Employees report to them when one task is finished and another task is needed. Crew leaders not only train new employees but perform evaluations of their work. Crew leaders have the responsibility to see that employees perform their jobs properly and when needed, reprimand and criticize employees for their poor work performance. See NLRB v. Broyhill Co. 514 F.2d 655 (8th Cir. 1975).

Inasmuch as the crew leaders have been directed to assign work and to direct employees by the Employer's supervisory and managerial employees, and the Employer has held the crew leaders out to its employees as supervisors, the crew leaders clearly act in their Employer's interest. The crew leaders clearly possess primary indicia of supervisory status. This authority is not only documented in the crew leader position description but is evident to the employees to whom the crew leaders assign work and provide direction.

The Employer argues that the responsibilities of crew leaders relative to assignment of work and/or direction of employees do not demonstrate the exercise of independent judgment and cites Clark Machine Corp., 308 NLRB 555 (1992). In Clark Machine Corp., the Board found that an employee was not a supervisor because the authority that he exercised in the assignment of work and direction of employees was routine and did not involve the use of independent judgment. In most instances, his supervisor gave him job assignments usually

consisting of blueprints and drawings which he merely relayed to the employees his supervisor had chosen. This is distinguishable from the instant matter in which supervisors have no input in choosing the employees to whom the crew leaders give assignments. The crew leaders do not simply relay job assignments from supervisors. The crew leaders, instead, make job assignments based on production reports that only provide a general outline and broad framework for the tasks to be accomplished by the employees in the areas under them. The crew leaders assign the work, check the work, evaluate the work, direct employees in their work, train and make sure, where necessary, that the work is corrected, all of the while ensuring that all company policies are being followed.

Having carefully considered the entire record, I conclude that, other than the authority to assign work and to responsibly direct employees, the crew leaders do not possess any other primary indicia of supervisory status. Contrary to the position taken by the Petitioner, I do not find that the crew leaders have the authority to hire, fire, transfer or discipline employees.

SECONDARY INDICIA SUPPORT A FINDING THE CREW LEADERS ARE SUPERVISORS

In an examination of the secondary indicia of supervisory status, I conclude that the secondary indicia strongly support a finding that the crew leaders are supervisors within the meaning of Section 2(11) of the Act. Secondary indicia of supervisory status includes whether an employee is perceived by others to be a supervisor, whether an employee receives a higher wage than others in the bargaining unit and whether a court's finding that an individual is not a supervisor will create an unreasonable ratio of employees to supervisors. See NLRB v. Baby Watson Cheesecake, Inc., 148 LRRM at 2903. Concerning whether an employee is perceived by others to be a supervisor, the record evidence clearly shows that unit employees were aware that the crew leaders attend the daily production meetings and implement the goals and objectives determined in those meetings by their assignment of work and direction of employees. The Employer has placed the crew leaders in positions of

authority; and in the absence of any clearly defined role of the stipulated supervisors in the day-to-day activities of unit employees, employees necessarily perceive crew leaders to be supervisors implementing company policies and insuring that employees act consistently with those company policies. As a practical matter, the crew leaders are the company authority most evident to employees on a day-to-day basis. Crew leaders seldom work with the tools doing production work which only bolsters employees' perceptions of crew leaders as supervisors.

The crew leader position description lists the requirement that crew leaders supervise other areas when required and oversee and direct the activity of employees of the area. Not only do employees perceive crew leaders as supervisors but the Employer, by its own position description, also perceives them as supervisors. Crew leaders also have signed notices of disciplinary actions on the line with the word "supervisor" underneath it. The Employer has thus represented to its employees that crew leaders were supervisors, and any employee reading one of these notices of disciplinary action would conclude that the person signing as a supervisor was, in fact, a supervisor.

With respect to the secondary indicia of higher wages, crew leaders are always paid higher than any of the employees beneath them in their area. Specifically, the crew leader are paid either \$18.55 an hour, or if any employee in that crew leader's area earns more than \$18.55, the crew leader receives \$.65 an hour more than the highest scale rate in that area.

The secondary indicia that concerns whether a finding that an individual is not a supervisor would create an unreasonable ratio of employees to supervisors is also met. The Employer argues that there are only 9 supervisors who supervise a bargaining unit of 366 employees. The overall ratio of supervisors to employees would be 40 to 1. Specific witness testimony revealed that some stipulated supervisors supervise 60 to 70 employees. Second shift, which has 112 employees, only has one supervisor. Furthermore, unless crew leaders are supervisors, the Employer's entire third shift of 52 employees operates without a single supervisor on the premises. The "ratio of supervisors to supervised is a factor much

emphasized in the cases.” Empress Casino Joliet Corp. v. NLRB, 204 F.3d 719, 722 (7th Cir. 2000). “A business cannot operate efficiently unless the Employer has a team of employees he controls to whom he can delegate the essential supervisory functions that he cannot exercise personally. *Id.* The team in the instant case consists of the team leaders. See Pennsylvania Truck Lines, 199 NLRB 641, 642 (1972).

In view of the above and the record as a whole, I find that the crew leaders possess supervisory indicia under Section 2(11) of the Act. Accordingly, I find the crew leaders to be supervisors and exclude them from the unit found appropriate.

6/ Your attention is directed to Part 103, Subpart B, Section 103.20 of the Board's Rules and Regulations, Series 8, as amended, which provides, inter alia, that employers shall post copies of the Board's official Notice of Election in conspicuous places at least three full working days prior to 12:01 a.m. of the day of the election, that failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed, and that an employer shall be estopped from objecting to nonposting or late posting of Notices unless it notifies the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received the Notices. You may wish to review the above rule in its entirety so that you are fully aware of its complete contents and the obligations imposed by it.

7/ The full first and last names and addresses of all eligible voters must be filed by the employer. North Macon Health Care Facility, 315 NLRB 359 (1994).

Classification Index Code: 177-8520-4700, 177-8520-2400
Date Issued: 4/5/02